

Appl. No. 09/778,375  
Atty. Docket No. 8414Q  
Amdt. dated January 6, 2004  
Reply to Office Action of October 21, 2003  
Customer No. 27752

#### REMARKS

Claims 1 - 16 are pending in the present application. Claims 1-2, 6, 8-11 and 16 have been rejected under 35 U.S.C. § 102. Claims 3, 7, and 14 have been rejected under 35 U.S.C. § 103. Claims 4-5 and 12-13 have been objected to as allowable but dependent on a rejected base claim.

#### Changes to the Drawings

The drawings supplied on July 15, 2003 have been indicated as not approved for not highlighting changes. However, this is believed not to be the case. The prior response detailed the changes and provided both a "clean" amended set of drawings and an annotated set of drawings. The instant office action indicates disapproval of the changes, but does not repeat the objections to the drawings. This response again includes the proposed amended drawings and an annotated set of the drawings. Additionally, page 5 and the description below detail the changes made to the drawings versus those originally filed. The Examiner is respectfully requested to consider the drawings in light of the annotated version and the description of the changes and approve the drawing changes.

The drawing changes made are to reference numerals and lead lines. Specifically, In Fig. 1, previously omitted reference numeral 56 has been added. In Figs. 1 and 2, reference numeral 52 has been redesignated reference numeral 54. In Fig. 1, reference numerals 37 and 120 have been removed. In Fig. 2, reference numeral 37 has been removed. In Fig. 4, reference numerals 500, 502, 504, 506, 508, 510, 43, and 44 have been removed. In Fig. 5, reference numeral 605 has been removed. The attached appendix provides replacement sheets, and annotated sheets showing the addition and deletions of the above-detailed changes.

#### Rejections Under 35 USC § 102

Claims 1-2, 6, 8-11, and 16 have been rejected under 35 U.S.C. § 102(b) as anticipated by Glaug et al. (US 5,797,892). None of these claims, however, is anticipated by the Glaug et al. patent. For example, the Office Action cites to column 5, lines 29-32 of the Glaug et al. patent for disclosure of the claimed phase change material. The cited portion of the Glaug et al. patent, however, only discloses temperature change elements and "feel wet" liners of absorbent articles. There is no evidence cited to in the Office Action that Glaug et al. discloses the claimed phase change material. A material which simply effects a temperature change does not necessarily change phases. The Office Action provides no evidence that Glaug et al. discloses an absorbent article comprising a topsheet, backsheet,

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and absorbent core, in which a phase change material (i.e. a material which will transition from one phase to another such as from the solid to liquid phase) disposed on at least a portion of the article. Mere temperature change is not identity with phase change.

The Office Action responds to Applicants' arguments that these features are reading limitations from the specification into the claims. Such is not the case, the plain and ordinary meaning of "phase" is one of the three basic physical states of matter (i.e. solid, liquid or gas). Therefore, a "phase change" requires transition from one of these states to another. To the extent that the Office Action is defining "phase change material" as a material "capable of adding or removing heat," this definition is not correct. It is true that this language (of a **property** of a phase change material) is present in the specification. It does not follow, however, that all materials capable of adding or removing heat are therefore phase change materials even if they do not in fact change phase. This is not the case of trying to read a limitation from the specification into the claim in violation of *In re Van Genus*. Here the claim expressly requires a phase change material. The Office Action is not considering the only accepted ordinary definition of what a phase change is. It simply is not as broad as any material which adds or removes heat. In fact, the instant specification discloses materials which can add or remove heat using physical mechanisms other than phase changes. While the Office Action is permitted to construe the claims as broadly as reasonable, it is not permitted to ignore the plain and ordinary meaning of the term "phase" and give a meaning to "phase change material" which does not require a change from one phase to another. Because one of the 3 basic states of matter is what "phase" already means in this context – recitation in the claim of such a change is not necessary – it is already present by virtue of the claim term "phase change material."

Because the Office Action does not demonstrate identity between Gluag et al. and Claim 1 (at a minimum because Glaug et al. is lacking the claimed phase change material), the rejection of Claim 1 over Gluag et al. must be withdrawn. Similarly, Claims 2, 6, and 8-9 all depend from Claim 1 and are not anticipated by the Glaug et al. patent for at least the same reasons given above with respect to Claim 1. It is also noted, that the disclosure of the Glaug et al. patent cited in the Office Action with respect to the remaining claims similarly only pertains to a temperature change element and does not disclose the claimed phase change material.

Claims 10 and 11 depend from Claim 16. As Amended Claim 16 is patentable over the Glaug et al. patent, Claims 10 and 11 are similarly patentable. For example, Glaug et al. does not

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disclose the claimed thermal cell actuator which effects a change in at least one property other than temperature itself of at least a portion of the article. By contrast, the temperature change elements of Gluag et al. merely effect a temperature change (which is provided for its own sake). Gluag et al. does not disclose the use of a temperature change to effect some other change in the properties of a portion of the article itself. Therefore, none of Claims 10,11 or 16 are anticipated by the Gluag et al. patent.

For all of the foregoing reasons, the rejections under 35 U.S.C. § 102 over Gluag et al. should be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 3, 7, and 14 have been rejected under 35 U.S.C. § 103 as unpatentable over Gluag et al. in view of Salyer (US 5,254,380). All of the rejections under 35 U.S.C. § 103 depend upon the combination of Gluag with the disclosure of Salyer. This rests upon the premise that Gluag itself recognizes a phase change material. As discussed above, Gluag et al. only discloses temperature change elements, not necessarily phase change materials. Therefore, the Office Action provides no motivation to look to the disclosure of Salyer to make the required combination of references. Similarly, the Office Action provides no reasonable expectation of success coming from the prior art itself without regard to the applicants' disclosure.

Therefore, a *prima facie* case of obviousness has not been established with respect to claims 3, 7 and 14 and these rejections should be withdrawn.

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Conclusion


All of the relevant rejections and objections in the Office Action have been addressed.

No new matter has been introduced by this amendment.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal and that all of the claims be allowed.

Issuance of a notice of allowance at an early date is respectfully requested.

Respectfully submitted,

By   
Matthew P. Fitzpatrick  
Attorney for Applicant(s)  
Registration No. 41,751  
(513) 626-4287

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Annotated Sheet Showing Changes

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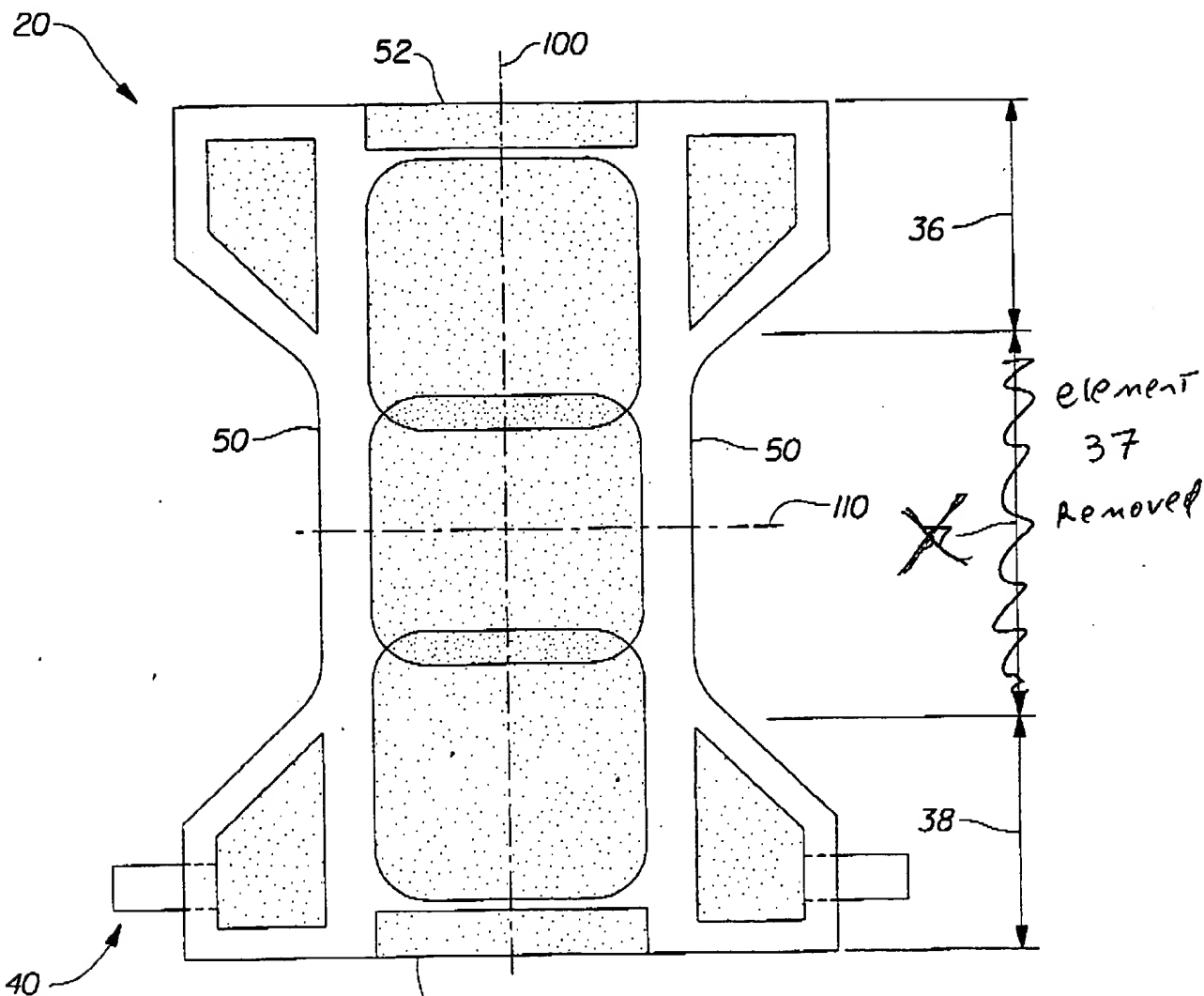
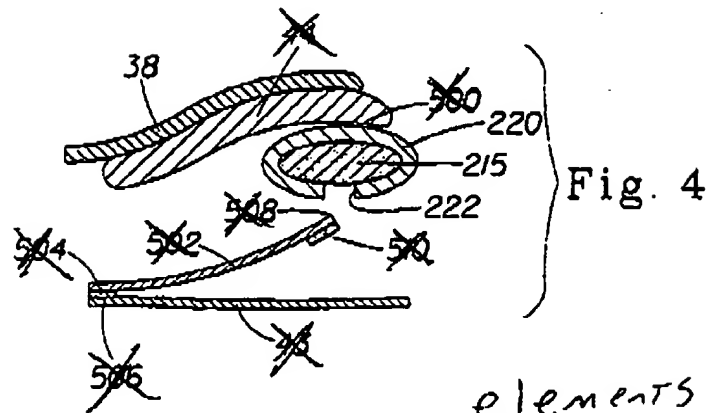


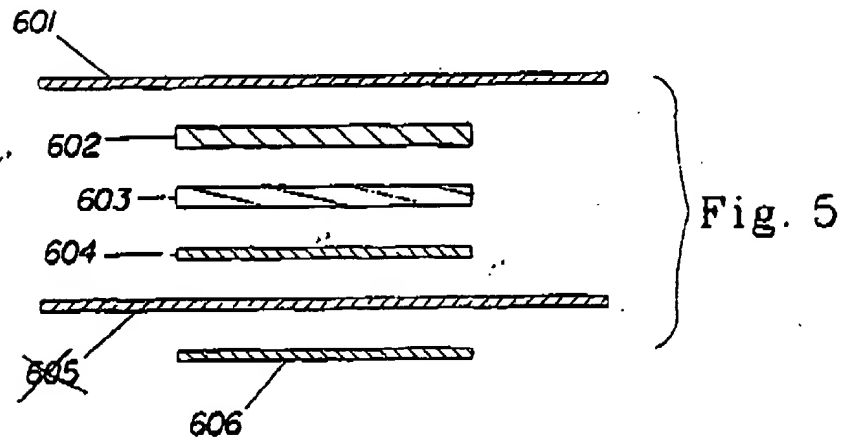
Fig. 2 52  
redesignated  
54

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Annotated Sheet Showing Changes

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elements  
500, 502, 504, 506, 508,  
510, 43 and 44  
have been removed



Element 605 has been  
removed